



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 23, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0221

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|-----------------------|---|-----------------------------------|
| # 1 | Arrests, Search and Seizure - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes | Not Sustained (Inconclusive) |
| # 2 | Arrests, Search and Seizure - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulate and Reasonable Safety Concern that the Person is Armed and Presently Dangerous | Not Sustained (Lawful and Proper) |
| # 3 | Patrol Operations - 16.230 - Issuing Tickets and Traffic Contact Reports 2. Officers Identify Themselves During all Detentions Duty to Provide Identification | Not Sustained (Training Referral) |
| # 4 | Patrol Operations - 16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops | Not Sustained (Lawful and Proper) |
| # 5 | Employee Conduct - 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that he was subjected to a pretextual traffic stop by the Named Employees and that the Named Employee treated him unprofessionally. It was further alleged that the Complainant was improperly frisked. Lastly, it was alleged that the Named Employee may have failed to serve the Complainant with tickets and a citation and that the Named Employee did not identify himself during the stop.

ANALYSIS AND CONCLUSIONS:

On April 5, 2020 at 1208 hours, Named Employee #1 (NE#1) conducted a traffic stop of the Complainant for allegedly committing a moving violation.

According to NE#1's Field Contact Report, NE#1 was traveling southbound on Martin Luther King Jr. Way S when he observed the Complainant's vehicle leave it's lane of travel twice. NE#1 activated his emergency lights as the vehicle was pulling into a public storage facility. The driver – who is the Complainant in this case – exited his vehicle. He was



upset with NE#1 and accused NE#1 of following him and trying to find a reason to stop him. When asked, the Complainant refused to provide any information other than his Washington State Driver License. He then placed his hands in his pockets.

Due to the Complainant's demeanor, the fact that they were alone, and the possibility of the Complainant having a weapon in his pocket, NE#1 performed a weapons frisk of the Complainant. When NE#1 took hold of the Complainant's arm to conduct the frisk, the Complainant became angry and attempted to pull away. NE#1 guided the Complainant towards his patrol vehicle and performed the weapons frisk. No weapons were located.

NE#1 performed a records check on the Complainant and found that the Complainant's license was suspended in the 3rd degree and that he had been ticketed four (4) times for driving on a suspended license or without a license. NE#1 issued the Complainant an infraction for SMC 11.53.100 – Unsafe Lane or Straddling and SMC 11.20.340 – No Motor Vehicle Insurance. NE#1 additionally completed a criminal citation for SMC 11.56.320 – Driving While License Suspended in the Third Degree. NE#1 told OPA that he chose to delay issuing the citations because of the Complainant's behavior during the stop. NE#1 informed the Complainant that he would be receiving his citations in the mail. The Complainant responded with an acknowledgement before ending the contact. It was determined during OPA's interview with NE#1, that the citations had not yet been processed or sent to the Complainant. A copy of the tickets NE#1 issued to the Complainant were provided to OPA.

In his interview with OPA, the Complainant stated that NE#1 was parked behind a fence prior to pulling into the roadway and following him for what the Complainant estimated to be about a half of a mile. At no point during that time did NE#1 activate the lights on his patrol vehicle. The Complainant pulled into Public Storage and up to the access gate. He stated that it was not until he had entered the access code for the gate that NE#1 activated his emergency vehicle lights.

The Complainant stated that he was upset at the time NE#1 decided to conduct the stop on his vehicle but that he gave NE#1 his identification when he asked him for it. The Complainant stated that he was not sure why NE#1 grabbed him or if he was going to be arrested but he acknowledged that he told NE#1 to get off him. NE#1 responded that he needed to keep his hands out of his pockets. The Complainant stated that, after this warning, he kept his hands out of his pockets. NE#1 ran his license and then told him that the ticket would be sent in the mail.

The Complainant stated that he filed a complaint because NE#1 exercised bad judgment and wrongfully issued him a citation. He maintained that he did not make any unsafe lane changes or perform any illegal actions while on the road. The Complainant believed that NE#1 followed him to determine a reason to pull him over. He further stated that, if he had not contacted OPA, he would not have known what was cited for as he had yet to receive any citations in the mail.

Named Employee #1 - Allegation #1

Arrests, Search and Seizure - 6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes

SPD Policy 6.220-POL-2(7) precludes the use of a traffic violation to investigate unrelated crimes. The policy defines "pretext" as where an officer stops "a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause." (SPD Policy 6.220-POL-9.) The policy explains that pretext



stops are prohibited by law. (*Id.*) It further explains that: “Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” (*Id.*)

NE#1’s In-Car Video was not activated early enough to capture any footage showing the Complainant’s vehicle leaving its lane of travel. Outside of the narratives given by NE#1 and the Complainant, which are in conflict, OPA has found no additional evidence regarding the Complainant’s alleged traffic violations. As such OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

Arrests, Search and Seizure - 6.220 - Voluntary Contacts, Terry Stops & Detentions 6. *Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulable and Reasonable Safety Concern that the Person is Armed and Presently Dangerous*

SPD Policy 6.220-POL-2(6) states that: “Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous.” The policy explains that: “The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer’s training and experience.” (SPD Policy 6.220-POL-2(6).) The policy provides a non-exclusive list of factors supporting such a search. (*See id.*)

At the time NE#1 conducted his frisk of the Complainant, the two were alone in a gated parking lot accessible only via private access code. Body Worn Video (BWV) confirmed that the Complainant refused to provide NE#1 any information other than his identification and that he was upset by the stop. Both NE#1 and the Complainant stated, and BWV verified that, at a point during their interaction, the Complainant had his hands in his pockets. Given the totality of these circumstances, OPA finds that NE#1’s decision to conduct a weapon’s frisk was reasonable and was consistent with policy.

As such, OPA recommends that the allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

Patrol Operations - 16.230 - Issuing Tickets and Traffic Contact Reports 2. *Officers Identify Themselves During all Detentions Duty to Provide Identification*

SPD Policy 16.230-POL-2 requires that officers identify themselves when taking law enforcement action during a traffic stop. The policy instructs that this should be done as early in the contact as is safe. (SPD Policy 16.230-POL-2.)

At the beginning of NE#1’s contact with the Complainant, the BWV captured NE#1 advising the Complainant that their encounter was being recorded. NE#1 also told the Complainant exactly why he was being stopped. However, NE#1 did not identify himself. When asked about this during his interview with OPA, NE#1 stated that he normally does identify himself by name during traffic stops, but when the Complainant exited his vehicle prior to their interaction, it distracted him from that routine. NE#1 explained that, after this point, he was focused on avoiding any escalation of the Complainant’s behavior and ending the contact as soon as possible.



At the conclusion of the stop, NE#1 informed the Complainant that he would be receiving a couple of tickets in the mail. As such, NE#1 took law enforcement action during a traffic stop and, pursuant to policy, he was expressly required to identify himself to the Complainant. He failed to do so here.

While NE#1 technically acted contrary to policy, this is a minor violation that, in OPA's opinion, is better served by retraining rather than discipline. This is particularly the case given the Complainant's conduct during the stop, which OPOA agrees with NE#1 was concerning, and that NE#1 has never been retrained or disciplined for failing to identify himself in the past. Accordingly, OPA issues the below Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement to identify himself during traffic stops. This is the case even when a subject may be difficult or argumentative. OPA notes that this case appears to be an isolated example of NE#1 not complying with this policy and OPA has confidence that this will not be an issue moving forward. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #4

Patrol Operations - 16.230 - Issuing Tickets and Traffic Contact Reports 3. *Officers Document All Traffic Stops*

SPD Policy 16.230-POL-3 details the documentation that can be generated because of a traffic stop. SPD Policy 16.230-TSK-1 instructs officers on what steps to take when issuing an infraction or TCR. SPD Policy 16.230-POL-11 provides two exceptions for when service on the driver is not required: first, when a criminal citation is referred to the Law Department for review; and, second, when a Notice of Infraction (NOI) is sent to the Court for mailing to the violator.

During his interview with OPA, NE#1 stated that he made the decision to delay issuing the Complainant's NOI and criminal citation because of the Complainant's behavior and the contentious nature of their interaction. He felt that keeping the Complainant on scene too long would further escalate the situation and lead to a use of force or further negative contact. When asked why he did not tell the Complainant what exactly he was being ticketed for, NE#1 could not provide a reason for his decision. NE#1 did, however, confirm that officers are not required to tell drivers this information.

Based on the above information, OPA does not believe that NE#1 acted unreasonably when he declined to issue the tickets and citations at that moment. OPA also does not find that the delay in issuance constitutes a violation of policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #5

Employee Conduct - 5.001 - Standards and Duties 10. *Employees Shall Strive to be Professional*

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time



employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on the totality of the evidence, OPA does not believe that NE#1 acted unprofessionally during this incident. First, while it would have been unprofessional – as well as illegal – to conduct a pretext stop, there is insufficient evidence to establish that NE#1 did so here. Second, while the situation did escalate, that appeared to be based mostly on the Complainant’s frustration with being stopped, and not to due NE#1’s behavior. Third, while NE#1 perhaps could have done more to calm the situation down – for example, providing more context for what was going on or explaining the purpose for the frisk prior to moving forward with it – this does not constitute unprofessionalism.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**